

BRB No. 99-0925 BLA

JOSEPH C. JENNINGS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Lawrence P. Donnelly, Administrative Law Judge, United States Department of Labor.

Joseph C. Jennings, Tazewell, Virginia, *pro se*.

Jennifer U. Toth (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision and Order (1998-BLA-00885) of Administrative Law Judge Lawrence P. Donnelly denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found that claimant established nine and one-quarter years of qualifying coal mine employment, and accepted the stipulation of the

¹Claimant is Joseph C. Jennings, the miner, who filed a claim for benefits on May 28, 1997. Director's Exhibit 1.

Director, Office of Workers' Compensation Programs (the Director), that claimant established the existence of pneumoconiosis which arose from his coal mine employment. The administrative law judge however found that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director responds, urging affirmance of the denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements by a preponderance of the evidence compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

The evidence of record relevant to the issue of whether claimant established the existence of a totally disabling respiratory impairment pursuant to Section 718.204(c) consists of one pulmonary function study, one arterial blood gas study and a medical opinion submitted by Dr. Forehand. Director's Exhibits 9, 11, 12. The administrative law judge properly found that both the pulmonary function study and the arterial blood gas study yielded non-qualifying results², that the record contains no evidence of cor-pulmonale with right-sided congestive heart failure, and that Dr. Forehand opined that claimant has no "respiratory impairment sufficient to

²A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values.

prevent [him] from returning to last coal mine job.” Decision and Order at 3; Director’s Exhibits 9, 11, 12. Consequently, we affirm the administrative law judge’s finding that claimant failed to establish that he is totally disabled from a respiratory impairment pursuant to Section 718.204(c)(1)-(4) and the denial of benefits. *Perry, supra*.

Accordingly, the administrative law judge’s Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge